



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

September 20, 2019

Mr. Don Moore
Dept. MR 77948
411A Highland Ave.
Somerville, MA 02144

Re: Freedom of Information Act Appeal No. 2019-APP-00098
FOIA Case No. 2019-FPRO-01208

Dear Mr. Moore:

This is in response to your email dated August 23, 2019. In your email, you appealed from the action of Robin Sherwood, Government Information Specialist, on your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for access to records concerning fitness for duty letters in a particular area that involve a particular address. After carefully considering your appeal, we are affirming Ms. Sherwood's action on your request in full. A decision on this matter is attached to this letter.

This is the final decision of the Postal Service regarding your right of access to records requested pursuant to the FOIA. You may seek judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have a principal place of business, the district in which the records are located, or in the District of Columbia.

The Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the requester's right to pursue litigation. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
Room 2510
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 202-741-5770
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For the General Counsel,

Ruth
Stevenson

Digitally signed by
Ruth Stevenson
Date: 2019.09.19
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Attorney
Federal Compliance

Enclosure

cc: Robin Sherwood
FOIAAppeal@usps.gov

OFFICE OF THE GENERAL COUNSEL
FEDERAL COMPLIANCE
HEADQUARTERS, WASHINGTON, D.C.

IN RE, APPEAL OF CASE NO.
2019-FPRO-01208

APPEAL NO. 2019-APP-00098

ATTORNEY RUTH STEVENSON
ON BEHALF OF GENERAL COUNSEL THOMAS J. MARSHALL

OPINION AND ORDER

After careful consideration, this office is affirming in full the actions of Robin Sherwood, Government Information Specialist, on FOIA request 2019-FPRO-01208.

I. STATEMENT OF FACTS

1. Requester has a long history of duplicate requests for fitness for duty exam letters issued by the Postal Service in a particular area (Albany) during a specified time period that involve a particular address in Albany. The Postal Service did not provide Requester with responsive documents, if any, in response to his past requests, based on 5 U.S.C. § 552(b)(6) ("Exemption 6"). Requester's right to access this information under the FOIA was ultimately adjudicated in United States District Court. See *Moore v. United States Postal Serv.*, No. 517CV00773 (MAD/TWD), 2018 WL 4903230 (N.D.N.Y. Oct. 9, 2018). In its decision, the court agreed with the Postal Service that individuals have a privacy interest in the information sought by Requester. The court also found that Requester did not assert a sufficient public interest to warrant disclosure of the information. Thus, the Postal Service could withhold the information under Exemption 6.
2. Following this adjudication in U.S. District Court, Requester submitted at least three additional requests for substantively identical information. Requester submitted these requests on October 12, 2018, October 17, 2018, and December 14, 2018. The Postal Service denied these requests and upheld the denials on appeal. The Postal Service noted that Requester's FOIA request had already been adjudicated in U.S. District Court.
3. On July 25, 2019, Requester submitted the request at issue in this appeal. In his appeal, he attempts to frame the request as seeking all Postal Service letters from a particular area that reference a particular address. The request again involves the Albany area. The request also asks for all letters that reference the same Albany address involved in Requester's previous requests. In addition, with his instant request, Requester submits an attachment indicating that he has personal knowledge that the Postal Service used this address in connection with fitness for duty exams. He also includes supplemental information indicating that he intends to uncover fitness for duty letters in response to his request.
4. On August 15, 2019, Ms. Sherwood responded to the request. In this response, Ms. Sherwood indicated that she interpreted the request as asking for identical information to Requester's previous requests, namely, all fitness for duty letters in a particular area during a specified time period that reference a particular address. Ms. Sherwood found that the Postal Service already adjudicated Requester's inquiries for this information and declined to process the request.
5. Requester now appeals Ms. Sherwood's response. His primary contention appears to be that his instant request is a new request and thus the Postal Service should process the request and provide him with any responsive documents.

II. APPLICABLE LAW

Congress enacted the FOIA to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352 (1976). Congress balanced this objective by recognizing that “legitimate governmental and private interests could be harmed by release of certain types of information.” *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 621 (1982). The FOIA “requires federal agencies to make Government records available to the public, subject to nine exemptions.” *Milner v. Dep’t of the Navy*, 562 U.S. 562, 562 (2011). In addition, other laws allow the Postal Service to withhold certain categories of records and information. See 39 U.S.C. § 410(c).

Exemption 6 provides that the FOIA does not apply to matters that are “personnel files and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b)(6). The personal privacy interests cognizable under Exemption 6 include an individual’s interest in avoiding public disclosure of personal matters, see *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762 (1989), which encompasses an individual’s control of information concerning his or her person, see *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994). Therefore, the records and information protected from public disclosure by Exemption 6 are not limited to those of an intimate or highly personal nature, see *U.S. Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 600, 601, 602 (1982), but also include, for example, records and information the public disclosure of which could result in an adverse effect, such as annoyance, see *Fed. Labor Relations Auth.*, 510 U.S. at 501, embarrassment, or retaliation, see *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 176, 177 (1991). In order for a personal privacy interest to be cognizable under Exemption 6, its degree need only be very slight. See *Fed. Labor Relations Auth.*, 510 U.S. at 500.

If an agency identifies an individual’s cognizable personal privacy interest under Exemption 6 in the responsive record or information, it is then the requester’s burden to overcome that personal privacy interest by establishing the following: (1) the requester seeks to advance a public interest cognizable under Exemption 6, and (2) the record or information is likely to advance that public interest; otherwise, the invasion of personal privacy is clearly unwarranted. See *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). The agency must weigh the individual’s personal privacy interest against the cognizable public interest, if any, that would be served by public disclosure of the record or information. See *U.S. Dep’t of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). The only public interest cognizable under Exemption 6 is the extent to which public disclosure of the record or information would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the federal government’s operations or activities. See *id.*

If a requester is dissatisfied with the Postal Service’s response to his or her FOIA request, the requester has a right to file an administrative appeal with the General Counsel. See 5 U.S.C. § 552(a)(6)(A); 39 C.F.R. § 265.8. The requester then has a right to judicial review of the Postal Service’s decision. 5 U.S.C. § 552(a)(4)(B); 39 C.F.R. § 265.8.

III. LEGAL ANALYSIS

We agree with Ms. Sherwood’s interpretation of Requester’s instant FOIA request. In the past, Requester has repeatedly sought letters (1) from the Albany area (2) sending Postal Service employees for fitness for duty exams (3) during a particular time period (4) that reference a particular address in Albany that Requester knows, based on personal knowledge, the Postal Service has used in the past to conduct fitness for duty exams. Requester now submits a request for all letters (1) from the Albany area (2) for the same time period (3) that reference the same Albany address invoked in his previous requests. On its face, this is substantively the same request. Furthermore, in supplemental information accompanying his request, Requester repeatedly acknowledges that his request seeks fitness for duty letters. This is particularly evident in the information Requester submits as an attempt to satisfy the public interest requirement necessary to overcome the protections of Exemption 6. Requester explicitly states that he makes his request to expose “the intentional act of USPS managers to...provide [the] wrong addresses to

people they send for fit for duty exams." Based on this information, it is reasonable to conclude that Requester is again seeking fitness for duty letters and, in fact, the very same fitness for duty letters that the Postal Service has adjudicated in multiple previous requests and in U.S. District court.

Accordingly, we agree with Ms. Sherwood. Requester's argument that his request is now an entirely new request that the Postal Service should satisfy puts form over substance. As upheld in U.S. District court, the information Requester seeks is exempt from disclosure by reason of Exemption 6. Individuals have a privacy interest in this information and Requester proffers no public interest sufficient to overcome this privacy interest. Furthermore, because the categories of records that Requester seeks are identical to the categories of records sought in previous requests, we consider that the Postal Service has already issued a final agency decision with regard to Requester's right of access to these records. *See Nat'l Treasury Employees Union v. Internal Revenue Serv.*, 765 F.2d 1174, 1177 (D.C. Cir. 1985) (refusing to consider successive FOIA suits for documents that were "identical except for the year involved"). Thus, it was also appropriate for Ms. Sherwood to decline to process the request.

IV. CONCLUSION

For the reasons above, we are affirming Ms. Sherwood's action on the initial request in full.

For the General Counsel,

Ruth

Stevenson

Attorney

Federal Compliance

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Ruth Stevenson
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